ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8

To: The Commission

SUPPLEMENTAL COMMENTS OF TRIBUNE BROADCASTING COMPANY

Tribune Broadcasting Company ("Tribune"), by its counsel, hereby submits its supplemental comments in the above-captioned proceedings. By its Public Notice, FCC 99-240, released September 9, 1999 ("Public Notice"), the Commission sought comment on how best to resolve "ties" arising among applications under certain of its new local ownership rules.[1] Specifically, the Commission proposed to utilize random selection to determine processing order among potentially conflicting applications filed on the same date.[2] For the reasons set forth

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[1] The Public Notice was published in the Federal Register on September 17, 1999. It provided for supplemental comments to be filed 15 days from publication, on October 4, and replies to be filed seven days thereafter, on October 11, 1999.

[2] Tribune agrees with the Commission's tentative conclusion to reject a system of processing in order of the exact time of filing; particularly in view of the fact that applications are filed in Pittsburgh with an outside agency, the Mellon Bank. A time-based system could lead to parties having messengers camped out on the sidewalk outside the Bank or other similar

(continued...)

below, Tribune submits that random selection should be utilized only AFTER the Commission first accords priority to certain applications. Specifically, among simultaneously filed applications, the FCC should afford processing priority first to preserve existing combinations and FCC-sanctioned relationships before resorting to random selection for entirely new combinations.

BACKGROUND

Tribune, through its wholly-owned subsidiaries, is the licensee of eighteen television stations.[3] Tribune also has pending before the Commission an application to acquire WBDC-TV, Washington, D.C. Tribune owns a minority interest in and is a lender to Qwest Broadcasting LLC, the ultimate owner of television stations WATL, Atlanta, GA and WNOL-TV, New Orleans, I A. Tribune also has a management agreement entered into after November 5, 1996 for television station WTXX, Waterbury, CT. Finally, Tribune is the beneficial owner under a trust which holds the license of television station KTWB-TV, Seattle, WA. That trust was created, and control of the licensee of KTWB was transferred to it, as a result of Tribune's acquisition of KCPQ, Tacoma, WA.

By its Report and Order in MM Docket Nos. 91-221 and 87-8, FCC 99-209 (released August 6, 1999) ("Order"), the Commission has revised its local ownership rules, including the television duopoly rule. That rule, as revised, now provides in part that an entity may own,

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[2](...continued)
absurdities.

[3] Those stations are as follows: WPIX, New York, NY; KTLA, Los Angeles, CA; WGN-TV, Chicago, IL; WPHL-TV, Philadelphia, PA; WLVI-TV, Cambridge, MA; KDAF, Dallas, TX; KHTV, Houston, TX; KCPQ, Tacoma, WA; WBZL, Miami, FL; KWGN-TV, Denver, CO; KTXL, Sacramento, CA; WXIN, Indianapolis, IN, KSWB-TV, San Diego, CA; WTIC-TV, Hartford, CT; WXMI, Grand Rapids, MI; WGNO, New Orleans, LA, WPMT, York, PA; and WEWB-TV, Schenectady, NY.

operate, or control two television stations in the same DMA if either their Grade B contours do not overlap or:

> (2) at the time the application to acquire or construct the station(s) is filed:
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> (i) at least one of the stations is not ranked among the top four stations in the DMA, based on the most recent all-day (9:00 a.m. - midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service; and
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> (ii) more than 8 independently-owned commercial and noncommercial television stations are licensed in the DMA. In areas where there is no Nielsen DMA, count the TV stations present in an area that would be the functional equivalent of a TV market.
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> [47 C.F.R. § 73.3555(b)(2).]

The Commission also provided that no applications under the new rules would be accepted until the effective date of those rules, sixty days after their publication in the Federal Register.[4]

The problem perceived by the Commission, to which the Public Notice was addressed, is that in a market which at present has more than eight independent voices, multiple applications could be filed on the same day, not all of which could be granted due to the voice count limitations. For example, if a DMA has ten independently-owned television stations and three duopoly applications are filed on November 16, 1999 relying on the eight independent voices test, only two of those applications would appear to be grantable. The Commission has proposed to utilize random selection to determine processing order among simultaneously field applications. Thus, in the example, the Commission would determine a processing order among the three applications and if the first two applications are selected and granted, presumably the third would

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[4] The Order was published on September 17, 1999. The effective date is therefore November 16, 1999.

be denied. The Public Notice seeks comments on the use of random selection, as well as on any alternatives that are fair and easy to administer.

Tribune agrees that random selection is a fair and efficient means of determining application processing order. However, before resorting to random selection, the Commission should first prioritize the applications by applying objective standards that preserve existing and FCC-sanctioned relationships and the reasonable expectations of potential applicants. With one exception noted below, random selection should be used to determine the order of processing among each group of applications of equal priority. Tribune also urges the Commission to provide a 30 or 60 day period to negotiate settlements among parties of equal processing priority prior to holding the proposed lotteries.

APPLICATIONS SHOULD BE DIVIDED INTO GROUPS OF EQUAL PRIORITY

The revised local ownership rules may set off a "land rush" for new deals.[5] It is certainly possible that a large number of applications for transactions under the new rules will be filed on the first day that they will be accepted, November 16, 1999. Many of those applications may involve publicly traded companies, subject to disclosure and filing obligations under the securities laws and the Hart-Scott-Rodino Act. They may also involve the commitment by those companies of hundreds of millions, or even billions, of dollars.

The Commission has long recognized its obligation to construe the Communications Act, and its rules and regulations thereunder, in a manner consistent with corporate, securities, and

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[5] See, e.g., FCC Eases Duopoly Broadcast Ownership, Comm. Daily, 1999 WL 7580119, Aug. 6, 1999, at 1; FCC Will Permit Owning 2 Stations in Big TV Markets: Land Rush is Expected, N.Y. Times, Aug. 6, 1999, at A1; Shop At Home Hires Bankers to Advise It on Alternatives, Including Possible Sale, Wall St. J., August 12, 1999, at B12.

antitrust laws.[6] To the greatest extent possible, applicants should be entitled to predictability with regard to the grantability of their otherwise lawful applications. Toward that end, certain types of applications merit processing before others -- a processing priority that would apply before resorting to any system of random selection. Tribune submits that there are three classes of applications that deserve priority in determining the order of processing.

First, applications seeking approval of combinations of stations with pre-existing, previously non-attributable relationships that were either (i) already approved by the Commission or (ii) permitted under the old rules should be processed before any others. For example, if a station owner has a previously non-attributable investment in another station in the same market that was approved by the Commission, an investment which will now become attributable under the new "equity/debt plus" rule, an application to combine those two stations into a duopoly should be processed before others in that market. Similarly, if a station owner has a previously non-attributable loan to another station in the market, an application seeking approval of a combination of these stations should receive processing priority as well. In this category, Tribune submits that processing priority should be assigned based on the duration of the pre-existing relationships so that the oldest relationship gets first priority. Thus, in the first category of priority, random selection would not be utilized to determine application processing order.

These combinations should be afforded priority in order to avoid breaking up pre-existing lawful combinations -- a consequence that was not intended by the Order. By definition. these

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[6] See, e.g., Committee for Full Value of Storer Communications, Inc. 57 R.R.2d 1651, 1656 (1985), aff'd sub nom. Storer Communications, Inc. v. FCC, 763 F.2d 436 (D.C. Cir. 1985); Tender Offers and Proxy Contests, 59 R.R.2d 1536, 1552-57 (1986), appeal dismissed sub nom. Office of Comm. of the United States Church of Christ v. FCC, 826 F2d 101 (D.C. Cir. 1987).

pre-existing combinations were either previously reviewed and approved by the Commission or deemed so unremarkable that they could be created without prior Commission approval. In these circumstances, the Commission should avoid disrupting previously settled, lawful relationships and the reasonable expectations of the parties that entered into those relationships. Regardless of the underlying policy that justified the decision to treat these relationships differently in the future, the Commission should avoid undoing previously approved and/or otherwise lawful relationships. A contrary rule will surely undermine the investor confidence in broadcast stations.

Applications proposing combinations of stations that are commonly-owned but separately operated under temporary waivers of the old rules or held in disposition trusts should be processed second. Relationships that were impermissible under the old rules but which were allowed to be created for a specified period of time or in order to permit the orderly transaction of business should not be subject to dissolution if they are permissible under the new rules. Parties should be allowed to maintain such relationships unless they involve some element that is inconsistent with the new rules.

For example, the Commission has long had a practice of granting temporary waivers in multiple station transactions or in transactions involving station "upgrades." Such waivers allow parties a reasonable time to come into compliance with the local ownership rules and may have involved either a condition that the stations be operated separately or a requirement that one station be held in a disposition trust. Provided that the proposed combination is permissible under with the new rules, the Commission should remove the condition of separate operation or permit a transfer from the trust back to the beneficial owner before processing other applications not involving any pre-existing relationships in the same market.

The Commission's decision to change and, in many instances liberalize, its ownership rules properly recognized the changes in the media marketplace that have occurred since these rules were originally adopted. These changes were needed to permit over-the-air broadcasters to compete in today's highly competitive, multi-channel environment. Given these marketplace changes and the Commission's recognition of their impact on the prospects for the over-the-air industry, the Commission should allow parties to complete transactions that, by definition, no longer present a threat to the Commission's competitive and diversity goals embodied in its new ownership rules.

Finally, the Commission should assign the lowest priority to all other applications that do not involve (i) combinations involving previously approved or previously permitted relationships under the old rules and (ii) undoing temporary waivers or disposition trusts. Tribune also urges the Commission to provide a 30 or 60 day period to permit parties within each priority group to reach a settlement prior to conducting the lottery. Such a procedure will preserve otherwise scarce Commission resources and allow the parties to privately resolve and value the right to processing priority. Additionally, with the exception of category one, Tribune urges the Commission to use random selection procedures to determine processing priority within each processing group.

CONCLUSION

Tribune submits that while random selection may be appropriate to determine the order of processing applications, it should only be applied among applications with equal priority. Accordingly, Tribune urges the Commission to adopt a set of priorities that avoids unnecessary

disruptions of pre-existing relationships before processing applications proposing new combinations. The Commission should first process those applications that involve pre-existing combinations that were previously approved or previously permitted under its rules. Second, it should process those applications undoing temporary waivers or disposition trusts when the proposed combination would be lawful under the new rules.

Respectfully submitted,

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